

E-Filed 4/28/2008

NOT FOR CITATION
IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

LANDMARK HOME MORTGAGE, INC.,

Plaintiff,

v.

GUILLERMO FLORES, ALVIN SILBERNAGLE,
ATLAS FINANCIAL SERVICES, INC. dba
ATLAS FINANCIAL SERVICES and ATLAS
REALITY, BERTHA MORENO, JOSE
ARRELLANO, ROBERT W. PETERSON,
individually and dba PETERSON APPRAISAL
GROU, and DOES 1 through 50 ,

Defendant.

Case Number C 07- 4654

ORDER¹ GRANTING MOTION TO
REMAND

[re: docket no. 12]

Plaintiff Landmark Home Mortgage, Inc. ("Landmark") moves to remand the instant action to the Santa Clara Superior Court for lack of federal subject-matter jurisdiction.

Defendants Jose Alfredo Arrellano and Bertha Moreno ("Arrellano and Moreno") oppose the motion.

I. BACKGROUND

Landmark filed this action in the Santa Clara Superior Court on July 26, 2007. The

¹ This disposition is not designated for publication and may not be cited.

1 named Defendants were Guillermo Flores, Atlas Financial Services, Bertha Moreno, Jose
 2 Arrellano, Robert W. Peterson, individually and dba Peterson Appraisal Group and Does 1
 3 through 50 (collectively, "Defendants"). Defendants were served in person on August 3, 2007.
 4 Landmark alleges that it entered into a loan agreement with Guillermo Flores based on a number
 5 of false representations by Defendants. On September 4, 2007, Arrellano and Moreno filed a
 6 notice of removal. The stated basis of the removal was the court's supplemental jurisdiction.
 7 Arrellano and Moreno represent that the instant action is based upon the same claims asserted in
 8 *PPH Mortgage v. Landmark Real Estate Inv., Inc.*, 07-00369 JF ("the PHH action"). The Court
 9 heard oral argument on December 21, 2007.

10 II. LEGAL STANDARD

11 A district court has supplemental jurisdiction over a state law claim if that claim is "so
 12 related" to claims over which the district court has original jurisdiction that it forms "part of the
 13 same case or controversy." 28 U.S.C. § 1367(a). However, even a district court has
 14 supplemental jurisdiction over a state law claim, it may decline to exercise such jurisdiction if:
 15 (1) the claim raises a novel or complex issue of state law; (2) the claim substantially
 16 predominates the claims over which the court has original jurisdiction; (3) the court has
 17 dismissed all claims over which it has original jurisdiction; or (4) in exceptional circumstances,
 18 other compelling reasons exist for declining jurisdiction. 28 U.S.C. § 1367(c). A decision to
 19 decline jurisdiction pursuant to one of these factors should take into consideration judicial
 20 efficiency, convenience of the parties, fairness, and comity. *ACRI v. Varian Associates, Inc.*, 114
 21 F.3d 999, 1001 (9th Cir. 1997).

22 III. DISCUSSION

23 Arrellano and Moreno argue that removal was proper under 28 U.S. C. § 1367 because
 24 this Court has original jurisdiction over the PHH action. 28 U.S.C. § 1367(a) provides in
 25 relevant part:

26 [I]n any civil action of which the district courts have original jurisdiction, the
 27 district courts shall have supplemental jurisdiction over all other claims that are so
 28 related to claims in the action within such original jurisdiction that they form part
 of the same case or controversy under Article III of the United States Constitution.
 Such supplemental Jurisdiction shall include claims that involve joinder or

1 intervention of additional parties.

2 The exercise of supplemental jurisdiction pursuant to § 1367(a) is discretionary. *Chicago v. Int'l*
3 *College of Surgens*, 522 U.S. 156, 172 (1997) (explaining that § 1367(a) jurisdiction involves a
4 “doctrine of discretion, not of plaintiff’s right”). Having reviewed the record in both actions, this
5 Court concludes that the claims in the instant case are not so related to the PPH action that they
6 properly may be characterized as bring a part of the same case or controversy. Accordingly, the
7 Court will exercise its discretion to decline supplemental jurisdiction under § 1367(a) and
8 remand the action to state court.

9 **IV. ORDER**

10 Good cause therefor appearing, IT IS HEREBY ORDERED that the motion for remand is
11 GRANTED. The clerk shall close the file.

12
13 DATED: April 28, 2008

14
15 
16 JEREMY FOGEL
United States District Judge

1 This Order has been served upon the following persons:

2 William C. Dresser loofwcd@aol.com

3 Richard Augustus Swenson rsloofwcd@aol.com

4 Roger Dean Wintle rdw@hlgusa.com

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